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No. 90-1912

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1990

STEPHANIE NORDLINGER,
Petitioner,
v.

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County and the
COUNTY OF LOS ANGELES,
Respondents.

Petition for Writ of Certiorari
to the Court of Appeal of the
State of California

BRIEF AMICUS CURIAE OF HOWARD JARVIS
TAXPAYERS ASSOCIATION AND PAUL GANN'S
CITIZENS COMMITTEE IN OPPOSITION TO
PETITION FOR CERTIORARI

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IDENTITY AND INTERESTS OF AMICI

Pursuant to Supreme Court Rule 37, Howard Jarvis
Taxpayers Association (HJTA) and Paul Gann's Citizens
Committee (PGCC) respectfully submit this brief amicus
curiae in opposition to Stephanie Nordlinger's petition
for certiorari. Written consent to the filing of this brief
has been granted by counsel for all parties. Copies of the

letters of consent have been lodged with the clerk of this Court.

The Howard Jarvis Taxpayers Association is a non-profit, tax-exempt California corporation. It was organized in 1978 by the late Howard Jarvis, a coauthor of Proposition 13.¹ Under its former name of California Tax Reduction Movement, HJTA was organized for the express purpose of defending the tax reduction benefits of Article XIII A. HJTA has over 200,000 members who actively support its ongoing tax reduction efforts.

Paul Gann's Citizens Committee is an incorporated organization which seeks to advance the interests of taxpayers. It was founded by the family of Paul Gann, a coauthor of Article XIII A, who recently passed away. It was created to continue the work of Paul Gann who sponsored several statewide ballot measures seeking to protect and expand Article XIII A.

Represented by the undersigned counsel, HJTA and Paul Gann filed an amicus curiae brief in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336 (1989), seeking to ensure that any decision in that case did not materially affect the validity of Article XIII A. In *Allegheny Pittsburgh*, this Court expressly stated that its decision did not address the validity of Article XIII A. 488 U.S. at 344 n.4.

Notwithstanding the express language of *Allegheny Pittsburgh*, three separate actions were filed in California courts seeking invalidation of Article XIII A based on that

¹ Proposition 13 added Article XIII A to the California Constitution and will be referred to throughout as "Article XIII A."

decision. HJTA and PGCC participated as amici curiae at all stages of these cases and, with respect to the case at bar, both briefed and argued the issues before the California Court of Appeal in the proceedings below.

OPINION BELOW

The opinion of the California Court of Appeal is reported at 225 Cal. App. 3d 1259 (1990).

STATEMENT OF THE CASE

Petitioner filed this action in the Los Angeles County Superior Court on September 18, 1989, against the County of Los Angeles and the county assessor. The trial court sustained defendants' demurrer without leave to amend which was subsequently upheld by the California Court of Appeal for the Second Appellate District in a published decision.

STATEMENT OF FACTS

Petitioner is a resident of the City of Los Angeles who purchased her home in 1988 for \$170,000. Upon purchase, her house was reassessed to current market value as allowed by Article XIII A. Under the terms of Article XIII A, petitioner will pay annually a maximum property tax of 1% of value.² In addition, future increases

² The 1% may be exceeded only for voter approved indebtedness.

in the taxable value of petitioner's residence will be limited to 2% annually. There is no dispute that petitioner's tax liability is based on the price she voluntarily paid for her home or that she was fully aware of the tax consequences of her purchase.

SUMMARY OF ARGUMENT

Article XIII A of the California Constitution was enacted to advance the specific policies of tax limitation, prevention of taxation on paper gains in the value of property, certainty in future property tax liability, and provision of a stable revenue source for local governments. More than 12 years of experience have demonstrated that Article XIII A has indeed advanced its intended policies.

Because Article XIII A advances legitimate policies, it does not violate the Equal Protection Clause of the United States Constitution. Decisions from this Court firmly establish that states have broad discretion in fashioning tax laws as long as such laws are not palpably arbitrary and advance legitimate policies.

The argument that Article XIII A restricts the right to travel is factually and legally flawed. First, petitioner has no standing to assert an impairment of the "right to travel." Second, because Article XIII A in no way distinguishes California residents from nonresidents, petitioner's reliance on residency cases is misplaced.

ARGUMENT

This suit is a direct challenge to Article XIII A, a system of property taxation overwhelmingly supported, and deliberately chosen, by the People of the State of California. If Article XIII A is declared unconstitutional, as petitioner desires, property owners statewide would have to pay billions of dollars in additional property taxes.³ Amici taxpayer organizations Howard Jarvis Taxpayers Association and Paul Gann's Citizens Committee file this brief in full support of Article XIII A's methods and policies of property taxation and urge this Court to deny the petition for certiorari.

I

THE DELIBERATE POLICY CHOICES REFLECTED BY ARTICLE XIII A FAR EXCEED THE MINIMUM EQUAL PROTECTION REQUIREMENT OF "RATIONAL BASIS"

For this lawsuit ultimately to succeed, petitioner must demonstrate that there exists no rational basis for Article XIII A's method of taxing property. Since this is an impossible showing as a matter of law, this Court should deny the petition for certiorari. Amici will demonstrate that not only does Article XIII A have a rational basis, its provisions have worked precisely as intended to further its legitimate goals and, more importantly, Article XIII A is simply *good tax policy*. It is not amici's intention to

³ Proposition 13 reduced property taxes \$7 billion just in its first year of operation. University of California, *Proposition 13, 10 Years Later, Summary of Proceedings of Public Issues Forum*, at 2.

overstate their case. The discussion of Article XIII A as sound policy serves only to demonstrate that it more than surpasses the minimum equal protection requirement of "rational basis."

A. Article XIII A Is a Unique Property Tax System Which Advances the Policies of Tax Limitation, Tax Certainty, Limitation of Taxation on Paper Gains in the Value of Property, and Stable Revenue Sources

Simply stated, Article XIII A uses *acquisition value* as a basis of taxing property and *not* current market value. For purposes of equal protection analysis, the classification of taxpayers is based on year of purchase. For example, purchasers of property in 1982 represent a class of individuals who have their property tax based on the value of the property in that year. In a real estate market with rapidly increasing values, Article XIII A generally favors those who have owned their property for a longer period of time. From this, petitioner argues that Article XIII A constitutes an *ipso facto* violation of equal protection. Petition for Writ of Certiorari (Petition) at 15-26.

What petitioner completely ignores is that Article XIII A conforms to the Equal Protection Clause for the simple reason that it is supported by very specific policies which are furthered by its operation. The existence of those policies—policies which were articulated prior to Article XIII A's enactment—distinguishes it from this Court's decision in *Allegheny Pittsburgh*.

Article XIII A is the only property tax system in the country which protects property owners from being taxed

on the paper gains in the value of their property and provides certainty in future property tax liability, while at the same time providing ever-increasing property tax revenues to local governments. This did not happen by accident. Article XIII A was well thought out and continues to work today precisely as the drafters—and voters—intended back in 1978.

Article XIII A is not made up of disparate, unrelated provisions. Rather, it "consists of four major elements: a real property *tax rate* limitation (§ 1), a real property *assessment* limitation (§ 2), a restriction on *state* taxes (§ 3), and a restriction on *local* taxes (§ 4)." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 231 (1978) (emphasis in original). Each of these provisions are "interrelated and interdependent, forming an interlocking 'package' . . . to assure effective real property tax relief." *Id.* Petitioner's suggestion that Article XIII A can be partially dismantled and still remain effective ignores the fact that Article XIII A's provisions are interrelated to accomplish its intended goals.

Article XIII A provides substantial property tax protection for Californians in two ways. First, it establishes a maximum 1% *rate* of tax on "full cash value." Cal. Const. Art. XIII A, § 1(a). Under this provision, the *highest* property tax which can be levied initially on a house with a purchase price of \$100,000, exclusive of voter approved indebtedness, is \$1,000. Second, and more importantly for the purposes of this lawsuit, Article XIII A defines the term "full cash value" in a manner which assures that total property tax liability for any given parcel does not increase more than 2% annually. Cal. Const. Art. XIII A, § 2. For example, even if a \$100,000 house increases in

market value by 10% in one year to \$110,000, its *taxable value* for the following year cannot exceed \$102,000. The purposes of Section 2 are clear. It prevents property owners from being taxed on the mere paper gains in the value of their property and provides certainty in property tax liability.

The initial "full cash value" under Article XIII A is determined by the value designated on the 1975-76 tax bill. In addition, under Section 2 of Article XIII A, property is reassessed to current market value when it is sold. The reason for this provision should be obvious. If all parcels of privately owned property in California were taxed at 1% of the "full cash value" (starting with the 1975-76 tax year), limited to only 2% increases annually and without reassessment upon change of ownership, the total amount of property tax revenues coming into local governments in California would continually *decrease* in terms of real dollars. This is because inflation has significantly outpaced the modest Article XIII A growth factor since its adoption. Tax Foundation, *Facts and Figures on Government Finance*, at 47 (1990 ed.). It should not be surprising then, that because of the reassessment provision and the rapid increase in real estate values, that the increases in property tax revenues coming into California local governments have *exceeded* inflation.⁴ Thus, the property tax relief provisions of Article XIII A are only

⁴ For example, in tax years 1987-88 to 1988-89 the growth for county assessed property (including the homeowners' exemption but not including other exemptions) increased 9.8% to \$1.2 trillion. *Report of the State Board of Equalization* (Oct. 1988).

half the equation. The reassessment upon change of ownership provision is an integral part of Article XIII A's operation which advances the policy of providing a stable revenue source for local governments.

Article XIII A is a departure from the traditional "current market value" systems. It was meant to be. "Current market value" systems do not reflect the careful balance between the needs of property owners and the needs of government. In short, "current market value" systems are inferior to Article XIII A.

B. Article XIII A Does Not Violate the Equal Protection Clause of the United States Constitution

Petitioner contends that a state which does not tax property based on current market value violates the Equal Protection Clause of the United States Constitution. This contention is without merit.

1. States Have Broad Discretion To Advance the Policies of Their Choice in the Taxation of Property

A state's disparate treatment of taxpayers does not violate the principle of equal protection as long as the classification is founded on a legitimate state policy which is advanced by the classification. *Kahn v. Shevin*, 416 U.S. 351, 355 (1974). In *Kahn*, this Court addressed the constitutionality of a Florida property tax exemption for widows only. A widower challenged this distinction on equal protection grounds. *Id.* at 352. This Court first observed that

"[a] state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. . . . This principle has weathered nearly a century of Supreme Court adjudication" *Id.* at 355-56 (citations omitted; footnote omitted).

This Court then concluded that the different treatment of widows and widowers " 'rest[ed] upon some ground of difference having a fair and substantial relation to the object of the legislation.' " *Id.* at 355 (citations omitted).

This Court's deference to the states on matters of tax policy can be traced back at least as far as *Bell's Gap Railroad Company v. Commonwealth of Pennsylvania*, 134 U.S. 232 (1890). There the Court concluded that "the XIVth Amendment was not intended to compel the States to adopt an iron rule of equal taxation." *Id.* at 237. The states may adopt distinctions between parcels of property of similar value, "so long as [such laws] proceed within reasonable limits and general usage, [and] are within the discretion of the State Legislature, or the people of the State in framing their Constitution." *Id.* at 237. *Bell's Gap Railroad Company* is persuasive because there, as here, the plaintiff contended that deviation from fair market value violated the Equal Protection Clause.

Since *Bell's Gap*, this Court has repeated the rule that "the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 355 (1973). See, e.g., *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 88 (1940) ("in

taxation, even more than in other fields, legislatures possess the greatest freedom in classification" (footnote omitted)); and *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (1959) ("the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests").

Based on these cases and others from this Court, the California Supreme Court rejected an equal protection challenge to Article XIII A shortly after it was enacted. The basis for its ruling was that Proposition 13 was logically related to its intended goals: The

" 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d at 235 (emphasis added).

2. Article XIII A's Classification of Property Owners Based on Original Purchase Price Is Crucial to Its Legitimate Objectives

Prior to the enactment of Article XIII A, the operation of the traditional current market value system in California simply was not working. California's exceptionally volatile real estate market had literally taxed many families out of their homes. The drafters of Article XIII A faced

a choice between two extremes: (A) continue current market value assessment of all properties or (B) hold assessments of all properties at the market value as of some date certain (e.g., 1974-75).

Choice (A) does not provide the certainty and predictability the proponents of Article XIII A sought to achieve.⁵ Even with the maximum rate set at 1% of current market value, owners would not be able to predict future market values. Neither would they be protected against rapid escalation of their property taxes. Changing demand for property or inflation could drive up market values and property taxes in unpredictable ways—independently of owners' ability to pay the resulting property taxes. It also would have meant a revenue stream to the tax levying governments fully responsive to changing market values.

Choice (B) would have led to full predictability of future property taxes. At the same time it would have meant a stream of property tax revenues unresponsive to changing market values and a revenue stream guaranteed to decrease in terms of real dollars, potentially crippling local services.

⁵ Petitioner has questioned the legitimacy of "certainty" in future property tax liability as a policy justification behind Article XIII A. Petition at 23. However, as noted by Adam Smith, "[t]he certainty of what each individual ought to pay is, in taxation, a matter of so great importance, that a very considerable degree of inequality . . . is not near so great an evil as a very small degree of uncertainty." Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, at 826 (Glasgow ed. 1979).

The Article XIII A drafters rejected those unacceptable extremes and created an inspired third alternative: resetting the assessed value of property at its market value whenever sold. Thus, the new owner is provided with predictability as to the future burden of property taxes and the property tax system as a whole is much more revenue responsive since the assessed value base will respond over time to higher demand and inflation.

The "cost" of this inspired choice by the drafters was the creation of the *appearance* of tax "inequity"—that is, owners of otherwise identical properties paying very different property taxes *during any given year*. Yet, in considering the value of property at the time of purchase, a prospective owner will consider the net benefits of ownership *over time*. The higher the anticipated property tax liability, the lower the net benefits; the lower the anticipated property tax liability, the higher the net benefits. The higher the future net benefits, the more a property is worth at the moment of purchase; the lower the future net benefits, the less a property is worth.⁶

Every new buyer anticipates moving through a pattern of declining reassessment relative to the then current market value of his or her property as the years pass. All are treated equally in the sense that all begin at 100% of market value and progressively shift to lower and lower

⁶ Capitalization of property tax liability into the value of property is an elementary economic concept accepted for decades. See Marshall, *Principles of Economics* (8th ed. 1920), Appendix G: The Incidence of Local [Tax] Rates, §§ 2-5 at 656-57; Brookes, "The Tax Capitalization Hypothesis," *Policy Review*, at 24-30 (Winter, 1987).

assessments relative to the then current market value. Whatever the initial tax "disadvantage" a new owner appears to have, relative to his or her neighbor, is made up as time goes on.

The *appearance* of tax inequity in any given year arises, not because the holding period burden differs depending upon date of purchase (it does not), but because individual owners are at *different stages* in the holding period—some are in their first year, some in their second year, some in their third year, etc.

Petitioner's argument that Article XIII A advances no legitimate policy cannot be taken seriously. Article XIII A is perhaps the most careful, fair, and logical property tax system ever devised. One may quibble over the relative merits of those policies, but there can be no legitimate argument that there is no rational basis for the assessment provisions of Article XIII A.

3. *Allegheny Pittsburgh* Does Not Control This Case Because There Was No Deliberate Policy Choice Being Advanced by the "Aberrational Enforcement Policy" of a Single County Assessor

In her contention that Article XIII A violates the federal Equal Protection Clause, petitioner relies heavily (if not exclusively) on this Court's decision in *Allegheny Pittsburgh*, 488 U.S. 336. Petition at 13-19. Petitioner's reliance on this decision is misplaced for two fundamental reasons.

First, it is difficult to understand petitioner's singular reliance on a case which went out of its way to say it did

not apply to the legal challenge which petitioner now brings. This Court in *Allegheny Pittsburgh* expressly stated:

"We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as 'Proposition 13.' Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred or constructed upon, or in a limited manner for inflation. Cal Const, Art XIII A, § 2 (limiting inflation adjustments to 2% per year). The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." *Id.* at 344 n.4.

In the quote above, this Court simply said that it was not considering a case where the classification between taxpayers was advancing a state policy.

The second reason *Allegheny Pittsburgh* does not apply to Article XIII A is suggested by the distinction drawn by this Court itself in the same footnote. Specifically, this Court seemed to have little trouble distinguishing between "the law of a State, generally applied" and the "aberrational enforcement policy" of a single county assessor. The distinction is crucial. *The very first sentence of this Court's decision in Allegheny Pittsburgh identifies West Virginia as having a current market value system of property taxation: "The West Virginia Constitution guarantees to its citizens that, with certain exceptions, 'taxation shall be equal and uniform throughout the State, and all property,*

both real and personal, shall be taxed in proportion to its value ' W Va Const, Art X, § 1." *Id.* at 338. There was no argument in that case, nor is there here, that this provision means anything other than current market value. While California has a similar provision (Article XIII, Section 1), Article XIII A was added to define "full cash value" in a very unique way to further the legitimate purposes of tax limitation, tax certainty, and revenue stability.

The critical difference between West Virginia and California for the purposes of assessing the merits of petitioner's argument is whether the system of taxation itself mandates adherence to a current market value system. As evident from a comparative analysis of each state's constitutional provisions, as well as the ballot materials accompanying Proposition 13, it is indisputable that California's classifications based on acquisition value are founded in state policy, whereas the single county assessor in West Virginia was acting *contrary* to the state policy mandating current market valuation. Petitioner has simply failed to grasp this dispositive distinction.⁷

⁷ The California Supreme Court itself in *Amador Valley* recognized that equal protection cases involving jurisdictions which require taxation on current market value are *meaningless*:

"[Such] cases . . . involve[] constitutional or statutory provisions which *mandated* the taxation of property on a *current value* basis. These cases do not purport to confine the states to a current value system under equal protection principles or to state an exception to the general rule accepted both by the United States Supreme Court and by (continued)

II

ARTICLE XIII A DOES NOT RESTRICT MOBILITY AND, IN ANY EVENT, PETITIONER HAS NO STANDING TO ASSERT SUCH A CLAIM BECAUSE SHE IS NOT A NEWCOMER TO CALIFORNIA

Petitioner's "right to travel" argument has no merit as a matter of law and, in any event, is a claim petitioner has no standing to assert. First, the basis of petitioner's "right to travel" argument is that newcomers to California are treated unfairly by Article XIII A. Petition at 27-30. Even if this were true, this is not a claim petitioner has standing to assert. There is nothing in the record of this case nor in the Petition suggesting that petitioner is a newcomer to California.

"The requirement of 'actual injury redressable by the court' . . . tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (citations omitted).

Even if petitioner were a newcomer to California, her "right to travel" claim would still have no merit. Article XIII A does not restrict mobility. Because the *most* that a property owner will pay is a reasonable 1%, even newcomers benefit from Article XIII A. The tax rates in other

us . . . that a tax classification or disparity of tax treatment will be sustained so long as it is founded upon some reasonable distinction or rational basis." 22 Cal. 3d at 235 (emphasis in original).

states are frequently much higher. Indeed, if petitioner thinks that the 1% tax rate for newcomers is unfair, what must she think about the average property tax rate of almost 3% which existed in California prior to Article XIII A? *State Board of Equalization 1979-80 Annual Report* at 28 (the average weighted assessed rate in California for tax year 1976-77 was 2.8%).

In contending that Article XIII A impairs the right to travel, petitioner cites *Zobel v. Williams*, 457 U.S. 55 (1982); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985); and *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986). Petition at 27-30. These residency cases are inapposite. For example, this Court in *Zobel* was considering an Alaskan law which gave dividends from state mineral income to adults on the expressed basis of years of residence in the state. The goal of Alaska's dividend was solely to reward longtime state residents. The superficial similarity between living in a state and possession of a parcel of real property is insufficient to render *Zobel* relevant to California's property tax system. The distinction drawn by Article XIII A is based on the value of property when acquired, not the length of time the property is held. In *Zobel*, the dividend was found to violate equal protection because rewarding longtime residents is not a legitimate state goal. The policies of tax limitation, insuring that paper gains are not taxed, and tax certainty have nothing to do with rewarding longtime state residents.⁸

⁸ For similar reasons, *Hooper* and *Soto-Lopez* are of no help to petitioner. *Hooper* involved a property tax (continued)

CONCLUSION

Petitioner has not demonstrated why this Court should grant the petition for certiorari. The decision of the state court below in no way conflicts with any decision from this Court. Indeed, this Court stated as much in *Allegheny Pittsburgh* when it said it was not considering a case where a state knowingly, and for legitimate policy reasons, adopted an acquisition value system of property taxation. Nor has petitioner brought forth a case where there is presented an important question of federal law which should be settled by this Court. Unless this Court wishes to become a "super legislature" passing judgment on the wisdom of the tax policies of individual states, the issue presented is best dealt with by the political processes within each state. In short, Article XIII A is more than "rationally based." For this reason, petitioner's equal protection challenge cannot prevail and this Court should deny the petition for certiorari.

DATED: July, 1991.

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exemption for veterans but only if they *resided* in the state prior to 1976 (472 U.S. at 614) and *Soto-Lopez* involved a civil service veteran's preference but only to veterans who were *residents* of the state at the time they entered service (476 U.S. at 900).